IDAHO FALLS, WEDNESDAY, OCTOBER 3, 2007 AT 2:45 P.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

MIGUEL ARREGUIN,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	**Docket No. 33305**
FARMERS INSURANCE COMPANY OF IDAHO,	)	
	)	
	)	
Defendant-Respondent.	)	
	)	

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bingham County. Hon. James C. Herndon, District Judge.

Baker & Harris, Blackfoot, for appellant.

Elam & Burke, Boise, for respondent.

Appellant Miguel Arreguin made a claim on his homeowners insurance policy, issued by Respondent Farmers Insurance Company of Idaho (Farmers), for fire damage to a detached garage. The homeowners policy provides coverage for the defined term "separate structure[s]" but excludes coverage for the undefined term "outbuildings." Farmers denied the claim based on its conclusion that the detached garage was an "outbuilding" and thus, excluded from coverage under the policy.

Arreguin sued Farmers for breach of contract and insurance bad faith. The district court granted Farmers's motion for summary judgment. Arreguin appeals and argues that the "outbuildings" exclusion is ambiguous and therefore, ineffective to exclude coverage for the detached garage.

IDAHO FALLS, WEDNESDAY, OCTOBER 3, 2007 AT 4:00 P.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

CHRISTA ANN HORKLEY,	)	
	)	
Plaintiff-Respondent,	)	
	)	
v.	)	
	)	
JAMES H. HORKLEY, individually and JOSEPH H. HORKLEY and DOROTHY M. HORKLEY, husband and wife; ZIONS FIRST NATIONAL BANK,	)	**Docket No. 32885**
	)	
Defendants-Appellants.	)	

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Madison County. Honorable Brent J. Moss, District Judge.

Swafford Law Office, Chartered, for appellant.

Anderson, Nelson, Hall, Smith, P.A., for respondent.

At the Seventh Judicial District court, Christa Horkley attempted to collect on a $150,000.00 promissory note from her former husband James Horkley.

The district court ruled that Mr. Horkley was in default on the note, and ordered him to pay $264,306.87, including interest applicable under the promissory note's terms. The court also denied Mr. Horkley's motion for reconsideration as to whether the statute of limitations barred recovery on certain installments on the note. Accordingly, James Horkley appeals to this Court.

IDAHO FALLS, THURSDAY, OCTOBER 4, 2007 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

ESSER ELECTRIC,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	**Docket No. 33232**
	)	
LOST RIVER BALLISTICS TECHNOLOGIES, INC.,	)	
	)	
Defendant-Respondent.	)	

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Butte County. Hon. James C. Herndon, District Judge.

Law Office of James Annest, Burley, for Plaintiff-Appellant.

Racine, Olson, Nye, Budge & Bailey, Chtd., Pocatello, for Defendant-Respondent.

Esser Electric (Esser) appeals the district court's order granting summary judgment in favor of Lost River Ballistic Technologies, Inc. (Lost River) in a dispute over a commercial contract on grounds that the court erred in not considering Esser's verified complaint which presented genuine issues of material fact as to his claims of breach of contract and unjust enrichment.

On or around November 14, 1999, Esser and Lost River entered into an oral agreement where Esser agreed to provide upgrades and improvements to the electrical system of a building Lost River leased in Butte County, and Esser would charge Lost River for the cost of the supplies necessary to complete the contract plus an additional ten percent over that cost. Esser filed a verified complaint on December 23, 2003 against Lost River, alleging breach of oral contract and

unjust enrichment. On January 21, 2004, Lost River counterclaimed, alleging breach of a 1999 written agreement, breach of implied covenant of good faith and fair dealing, and attorney fees.

Lost River moved for summary judgment on July 2, 2004, arguing that no genuine issues of material fact remained as to Esser's claims and Lost River's counterclaims since Esser failed to respond to Lost River's request for admissions which rendered Lost River's requests admitted. In support of its motion for summary judgment, Lost River provided the affidavit of Lynette Mosdell (Mosdell) which showed that Lost

River limited the electrical work that Esser performed to $5,000, Esser agreed, and Lost River paid him this amount on February 8, 2000. In opposition to Lost River's motion for summary judgment, Esser argued that the law permitted him to rely solely on his verified complaint which stated that Lost River owed him over $25,000 with interest and neither capped the cost of electrical work nor paid him $5,000. The district court disagreed, holding that the law prohibited Esser from relying on his pleading and that summary judgment was therefore appropriate in favor of Lost River on Esser's claims, and in part on Lost River's counterclaims, on grounds that Esser failed to provide the court with any affidavits or evidence to rebut Lost River's summary judgment evidence.

A jury returned a special verdict in favor of Lost River on the remaining issue of damages on April 6, 2005, and the district court entered its final judgment against Esser for $56,675.12, including costs and attorney fees, on April 26, 2005. Esser timely appealed.

IDAHO FALLS, THURSDAY, OCTOBER 4, 2007 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

BMC WEST CORPORATION,	)	
	)	
Plaintiff-Respondent,	)	
	)	
v.	)	
	)	**Docket No. 33140**
JAMES H. HORKLEY and JOE'S FILING STATION, L.L.C.,	)	
	)	
	)	
Defendants-Appellants.	)	

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Madison County. Honorable Brent J. Moss, District Judge

Swafford Law Office, Chartered, for appellant.

Justin R. Seamons, for respondent.

James Horkley hired Darin Davies to construct two buildings on property located in Rexburg, Idaho. Mr. Davies acquired materials used to construct the buildings from BMC West Corporation. A dispute arose regarding Davies' payment for these materials, and BMC West Corporation responded by filing a lien on the buildings constructed with the relevant materials. It then sought to foreclose on the lien.

On the foreclosure issue, BMC West Corporation filed a motion for summary judgment, which was granted by Judge Moss. From this ruling, Horkley appeals to this Court, arguing that he had fully paid Davies and that the lien on his property was therefore invalid.

IDAHO FALLS, THURSDAY, OCTOBER 4, 2007 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

FRANK LANE FOSTER and EDITH FOSTER, husband and wife,	)	
Plaintiffs-Appellants,	)	
v.	)	
JOHN B. TRAUL, M.D., and ANESTHESIA ASSOCIATES OF POCATELLO, P.A.,	)	
Defendants-Respondents,	)	**Docket No. 33537**
and	)	
JOHN TATHAM, CRNA, and POCATELLO REGIONAL MEDICAL CENTER,	)	
Defendants.	)	

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, for Bannock County. Hon. N. Randy Smith, District Judge.

Lowell N. Hawkes, Chartered, Pocatello, for appellants.

Quane Smith, LLP, Boise, for respondents Anesthesia Associates of Pocatello, P.A. and John B. Traul, M.D.

Racine, Olson, Nye, Budge & Bailey, Chartered, Pocatello, for respondent John B. Traul, M.D.

Lane Foster underwent back surgery on December 15, 1998. Following the back surgery, Foster discovered vision loss in his right eye and reduced vision in his left eye. A doctor at the Moran Eye Center subsequently diagnosed Foster with bilateral posterior ischemic optic neuropathy. Foster filed suit against Traul, Anesthesia Associates and others, alleging medical malpractice and lack of informed consent. In 2005, this Court affirmed the district court's grant

of summary judgment to Defendants on Foster's negligence claim, but vacated the judgment as to Foster's informed consent claim. Shortly thereafter, defendants again moved for summary judgment. Foster submitted a doctor's affidavit in opposition to the motion, which relied in part on two previously stricken affidavits submitted by the doctor. The district court first struck the portions of the affidavit as to causation and injury, which referred to the prior affidavits. Next, the district court granted summary judgment in favor of Traul and Anesthesia Associates because Foster failed to meet his burden with regard to the causation element of his informed consent claim. Foster appeals to this Court, arguing the district court erred in (1) striking the affidavit, (2) granting summary judgment to Traul and AA, and (3) denying his motion to disqualify defendants' attorneys.

POCATELLO, FRIDAY, OCTOBER 5, 2007 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

ADAM PAUL STEED, an individual, and BENJAMIN PAUL STEED, an individual,	)	
Plaintiffs-Respondents,	)	
v.	)	
GRAND TETON COUNCIL OF THE BOY SCOUTS OF AMERICA, INC., a corporation,	)	
Defendant-Appellant,	)	
and	)	**Docket No. 33272**
BOY SCOUTS OF AMERICA, a corporation; BRADLEY GRANT STOWELL, an individual, JUDITH STOWELL, an individual, CARL BRADFORD ALLEN, an individual, JIM SUMMERS, an individual, C. HART BULLOCK, an individual, ELIAS LOPEZ, an individual, KIM A. HANSEN, an individual, ROBERT FAWCETT, an individual; and JOHN DOE individuals, I through V; and JOHN DOE CORPORATIONS, I through V,	)	
Defendants.	)	

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, in and for Bannock County. Hon. Ronald E. Bush, District Judge.

Racine, Olson, Nye, Budge & Bailey, Chartered, Pocatello, for Plaintiffs-Respondents.

Moffatt, Thomas, Barrett, Rock & Fields, Chartered, Idaho Falls, for Defendant-Appellant.

The Grand Teton Council of the Boy Scouts of America (GTC) appeals the district court's denial of its motion to dismiss a complaint brought by Adam Steed and Benjamin Steed (the Steeds). The complaint arises out of an incident of sexual abuse involving Bradley Stowell (Stowell) while Stowell was employed by GTC as the program director at Camp Little Lemhi near Swan Valley, Idaho.

In their complaint against GTC, the Steeds alleged assault and battery, false imprisonment, negligence, negligence *per se*, and gross negligence. GTC filed a motion to dismiss, arguing that the Steeds did not file their complaint within the applicable two-year statute of limitations contained in Idaho Code § 5-219(4). The Steeds responded that their complaint was timely because it fell under the purview of Idaho's law governing tort actions in child abuse cases, Idaho Code § 6-1701, which provides for a five-year statute of limitations. The district court heard oral argument on the motion and held that the Steeds' claims of assault and battery, false imprisonment, and gross negligence were time-barred, but that there was a genuine issue of material fact as to whether GTC is liable to the Steeds based upon Idaho Code § 6-1701.

GTC argues on appeal that the district court erred by holding that the Steeds' complaint is not time barred under Idaho Code § 5-219(4). GTC also argues the district court erred by holding that under Idaho Code § 16-1701, a victim of child abuse has a civil cause of action against a third party who did not commit the abuse. Additionally, GTC argues the district court erred by holding that there is a genuine issue of material fact that GTC is liable to the Steeds under Idaho Code § 6-1701.

The Steeds reject GTC's arguments, and argue on appeal that the district court applied the correct statute of limitations to their case. They also argue the district court did not err in holding that there is a genuine issue of material fact that GTC is liable to the Steeds pursuant to Idaho Code § 6-1701.

POCATELLO, FRIDAY, OCTOBER 5, 2007 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

TED A. SWANSON,	)	
	)	
Plaintiff-Respondent,	)	
	)	
v.	)	**Docket No. 32827**
	)	
BECO CONSTRUCTION CO., INC.,	)	
Defendant-Appellant.	)	

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, Bannock County. Hon. Peter D. McDermott, District Judge.

McGrath, Meacham & Smith, Idaho Falls, for Plaintiff-Appellant.

Cooper & Larsen, Chtd., Pocatello, for Defendant-Respondent.

Beco Construction Co. Inc. (Beco) appeals the district court's order granting partial summary judgment to Ted A. Swanson (Swanson) in a dispute over the rental price owed for a skid loader.

Swanson, as the sole proprietor of Swanson Construction, filed a complaint on December 20, 2004 alleging that Beco breached a rental agreement between the parties in which Swanson agreed to provide Beco with the use of a Bobcat 773 Skidsteer skid loader beginning on August 27, 2004 "until finished" for the rental price of $300 "per working day." Beco argued that the understanding for this price was that it would only use the loader for a few days but ended up using it for two months. According to Swanson, the rental price of the loader was $300 per day – not a discounted weekly or monthly rate – and Beco defaulted on the agreement because it failed to make rental payments in the amount of $13,200.

Swanson moved for summary judgment on August 25, 2005 on grounds that the phrase "per working day" is unambiguous and clearly means that Beco will be charged $300 for the loader each day Beco is working the job for which the contract was written. Beco countered that summary judgment was not appropriate because the phrase was susceptible to more than one reasonable interpretation and course of performance should govern the agreement.

The district court disagreed with Beco, granting partial summary judgment in favor of Swanson on October 5, 2005 on grounds that the parties agreed to the rental price of $300 "per working day," and the term "per working day" is unambiguous. The court also stated that even if the express terms of the contract did not govern the agreement, course of performance would, and the parties' course of performance indicated that Beco accepted the lease term amount during the period of the lease.

On April 20, 2006, the district court entered its final judgment against Beco for $13,358.65, including attorney fees and costs. Beco timely appealed.

IDAHO FALLS, FRIDAY, OCTOBER 5, 2007 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

AUTUMN YOUNGBLOOD,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	
JESSIE HIGBEE, BIG O TIRES, and DENNIS CLAUNCH TIRES, INC., an Idaho corporation,	)	**Docket No. 33588**
	)	
Defendants-Respondents.	)	
	)	
	)	
	)	
	)	
AUTUMN YOUNGBLOOD,	)	
	)	
Plaintiff-Appellant,	)	
	)	**Docket No. 34259**
v.	)	
	)	
JESSIE HIGBEE, BIG O TIRES, and DENNIS CLAUNCH TIRES, INC., an Idaho corporation,	)	
	)	
Defendants-Respondents.	)	

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Richard T. St. Clair, District Judge.

Curtis & Browning, Idaho Falls, for appellant.

Merrill & Merrill, Pocatello, for respondent Big O Tires.

Racine, Olson, Nye, Budge & Bailey, Chartered, Pocatello, for respondent Higbee.

Appellant, Autumn Youngblood, was riding as a passenger in an automobile driven by Jessie Higbee. Youngblood was injured when Higbee's vehicle rear-ended another vehicle in Idaho Falls on June 5, 2003. Respondent, Big O Tires, Inc. (Big O), is the franchisor of the Idaho Falls Big O Tires store owned and operated by Dennis Claunch Tires, Inc. (Claunch). Claunch had allegedly inspected and worked on Higbee's brakes prior to the accident.

On June 3, 2005, Youngblood filed a complaint against Higbee and "Big O Tires" alleging that Big O Tires failed to exercise due care when repairing Higbee's brake system. Big O was served with the complaint on or about September 8, 2005. Big O moved for summary judgment arguing that it was not properly named in Youngblood's complaint and that there is no legal entity named "Big O Tires." The district court granted Big O's motion for summary judgment.

Youngblood appeals the district court's grant of summary judgment to Big O. Youngblood argues that summary judgment was improper because there are issues of fact as to whether Big O is liable to Youngblood on various agency theories and because the district court abused its discretion when it granted summary judgment instead of *sua sponte* amending Youngblood's complaint to reflect Big O's correct name.

BOISE, WEDNESDAY, OCTOBER 10, 2007 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	
	)	
v.	)	
	)	
SHAMI YAKOVAC,	)	
	)	
Defendant-Appellant.	)	
	)	
SHAMI YAKOVAC,	)	**Docket No. 34171**
	)	
Petitioner-Appellant,	)	
	)	
v.	)	
	)	
STATE OF IDAHO,	)	
	)	
Respondent.	)	
	)	

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. N. Randy Smith, District Judge.

Stephen A. Meikle, Idaho Falls, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

Appellant Shami L. Yakovac was convicted of possession of methamphetamine after a jury trial in Bannock County. The charge stemmed from an incident on February 20, 2004. On that day, police officers responded to a report of a physical confrontation. After they arrived, Yakovac waived them down from a pickup truck she was driving. Yakovac had a cut above her forehead and blood on her face. The officers learned that Yakovac had two outstanding warrants for her arrest. They took her into custody, and one officer transported Yakovac to the hospital for treatment. While there, Yakovac's probation officer requested a urinalysis; this test revealed the presence of cocaine, marijuana and methamphetamine. Meanwhile, the other officer

remained at the scene and searched Yakovac's truck pursuant to her arrest. In the pocket of Yakovac's coat, found lying on the front seat, the officer found a cigarette package containing a small spatula and a glass pipe with burnt, white residue. The forensic laboratory subsequently determined the residue in the pipe was methamphetamine. Yakovac was charged with possession of methamphetamine, pursuant to I.C. § 37-2732(c)(1).

Prior to the trial, Yakovac's counsel filed a motion to suppress the results of the urinalysis as to cocaine and marijuana, but did not object to the mention of methamphetamine. At trial, the district court ruled that the urinalysis results were admissible. The parties then stipulated to the admission of the positive results for methamphetamine only.

After her conviction, Yakovac filed an appeal from the judgment challenging the admission of the urinalysis results and asserting that certain comments by the judge were prejudicial. She also filed a petition for post conviction relief asserting ineffective assistance of counsel. The district court dismissed her petition, and Yakovac appealed.

The Court of Appeals affirmed in part, reversed in part and remanded the order summarily dismissing her application for post-conviction relief and affirmed Yakovac's judgment of conviction on direct appeal. *State v. Yakovac*, 2006 WL 3113540 (Ct. App. Nov. 3, 2006). Both Yakovac and the State petitioned for review of that decision. This Court granted those petitions on May 10, 2007.

BOISE, WEDNESDAY, OCTOBER 10, 2007 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	
	)	
v.	)	**Docket No. 33333**
	)	
KRAIG D. PARKINSON,	)	
	)	
Defendant-Appellant.	)	

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, for Madison County. Hon. Brent J. Moss, District Judge.

Sallaz & Gatewood, Chtd., Boise, for appellant.

Honorable Lawrence G. Wasden, Attorney General, Boise, for respondent.

Kraig Parkinson pleaded guilty to lewd conduct with a minor in March 1984. The district court discharged Parkinson upon completion of his probation in 1988. Parkinson subsequently filed a motion for leave to withdraw his guilty plea and substitute a plea of not guilty, and requested the charge be dismissed. The district court granted this motion in September 2000. Notwithstanding this decision, Parkinson's conviction remained, with a notation to the dismissal, in the National Crime Information Center (NCIC) database maintained by the Federal Bureau of Investigation (FBI). Thus, Parkinson filed a Petition for Expungement of Record pursuant to Idaho Code § 19-2604 on March 17, 2006. The district court denied his petition, finding it lacked authority to require notations of this case to be stricken from the NCIC database. Parkinson appeals to this Court, arguing the district court erred in its conclusion that it lacked the authority necessary to grant Parkinson's petition for the expungement of his criminal record.

BOISE, WEDNESDAY, OCTOBER 10, 2007 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

TRAVIS HAUSCHULZ,	)	
	)	
Petitioner-Appellant,	)	
	)	
v.	)	**Docket No. 33796**
	)	
STATE OF IDAHO,	)	
	)	
Respondent.	)	

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, for Power County. Hon. Peter D. McDermott, District Judge.

Molly J. Huskey, State Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

In 1999, Travis Hauschulz pleaded guilty to felony escape and was sentenced shortly after. He directly appealed his conviction, and the Court of Appeals affirmed. In a separate action, Hauschulz sought to withdraw his guilty plea. The district court summarily dismissed his motion to withdraw his guilty plea. He appealed, and the Court of Appeals ultimately affirmed the district court. This Court issued a remittitur on the motion on July 19, 2002. Hauschulz then filed a Petition for Post-Conviction Relief on July 16, 2003. The district court summarily dismissed Hauschulz's petition as untimely. The Court of Appeals affirmed the district court on the basis that the petition failed to assert a genuine issue of material fact. Hauschulz appealed to this Court, contending the Court of Appeals's decision was in conflict with its prior decisions. This Court granted review on that basis.

BOISE, FRIDAY, OCTOBER 12, 2007 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	
	)	
v.	)	
	)	
JOHN DOE,	)	**Docket No. 34170**
	)	
Defendant-Appellant.	)	
	)	
	)	
	)	
	)	

Appeal from the District Court of the Third Judicial District of the State of Idaho, in and for Canyon County. Hon. Renae J. Hoff, District Judge.

Hon. Lawrence G. Wasden, Attorney General for the State of Idaho, Boise, for Plaintiff-Respondent.

Thomas A. Sullivan, Canyon County Public Defender, Caldwell, for Defendant-Appellant.

John Doe (Doe) appeals his conviction under the Juvenile Corrections Act for the crime of malicious injury to property.

In July of 2001, thirteen-year-old Doe, his brother, and a friend were walking through a weed-covered field adjacent to an apartment complex in Nampa. Doe's brother produced a cigarette lighter and proceeded to light on fire, and then extinguish, several weeds. Doe took control of the lighter and also began lighting weeds on fire. The fire ignited by Doe grew out of control and the trio was unable to extinguish it. Doe and his companions ran to a nearby community center to phone for the fire department. Even though the fire department was contacted, it was too late to stop the adjacent apartment complex from catching on fire and being destroyed in the ensuing conflagration. When questioned about the fire, Doe initially claimed

someone else had caused the fire. Doe eventually admitted that he started the fire by intentionally burning the weeds in the adjacent field.

Doe was charged with two counts of malicious injury to property in violation of Idaho Code § 18-7001. The magistrate court conducted an evidentiary hearing and found Doe to be within the purview of the JCA for both counts. Doe appealed to the district court, which affirmed the decision of the magistrate court. Doe then appealed the decision of the district court, and his appeal was heard by the Court of Appeals. In a two-

to-one decision, the Court of Appeals affirmed the district court's order, holding that Doe fulfilled the malice element of Section 18-7001 because under the doctrine of transferred intent the requisite mental state may be transferred within the limits of the same crime. The Court of Appeals concluded that Doe's intent to set fire to the weeds in the field transferred to the ultimate destruction of the apartment complex. Doe filed a petition for review of the opinion of the Court of Appeals, which was granted by this Court.

Doe argues on appeal that the facts proved in this case do not create criminal liability under Idaho Code § 18-7001 because it was not established that the weeds he set on fire were the property of another. Doe also argues that the facts do not prove a malicious act.

The State rejects Doe's arguments, and argue on appeal that there was substantial evidence presented at trial from which the magistrate court could find beyond a reasonable doubt that Doe maliciously injured property not his own.

BOISE, FRIDAY, OCTOBER 12, 2007 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

HIGHLANDS DEVELOPMENT CORPORATION,	)	
Petitioner-Appellant,	)	
v.	)	**Docket No. 33174**
CITY OF BOISE,	)	
Respondent.	)	

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, for Ada County. Hon. D. Duff McKee, District Judge.

Davison, Copple, Copple & Cox, Boise, for appellant.

Teresa A. Sobotka, Boise City Attorney's Office, Boise, for respondent.

Highlands Development Corporation owns two parcels of land in Ada County that are within the City of Boise's area of impact and adjacent to city limits. Ada County and the City of Boise had earlier entered into an "Area of Impact Agreement" that required property owners to apply for annexation to the City if they wanted to develop land that was within the area of impact and adjacent to city limits. Highlands applied for annexation to the City. The City annexed the property under the zoning designation "A(Open)", which allowed for one dwelling unit per acre. Highlands protested, contending it should have received a higher density zoning designation. The City invited Highlands to request a re-zone once it submitted a development plan to the City Council. Highlands refused and instead filed an administrative appeal with the district court, as well as making a claim for civil damages. The district court dismissed the appeal. Highlands appealed to the Supreme Court.

BOISE, FRIDAY, OCTOBER 12, 2007 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

ANDREW NAVARRO,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	**Docket No. 34118**
	)	
LAURA YONKERS,	)	
	)	
Defendant-Respondent.	)	

Appeal from Magistrate Division of the District Court of the First Judicial District of the State of Idaho, Benewah County. Hon. Patrick R. McFadden, Magistrate Judge.

Kevin J. Waite, Coeur d'Alene, for appellant.

Peter J. Hutchinson, St. Maries, for respondent.

Appellant, Andrew Navarro, appeals the Magistrate Court's decision, awarding primary physical custody of the parties' minor daughter to Respondent.

Navarro and Yonkers met in Carson City, Nevada, and moved to St. Maries, Idaho at the end of 2001. Their daughter was born in 2002; Navarro and Yonkers were and are unmarried. In August 2004, Yonkers left Idaho with the parties' minor child, and returned to Carson City. Navarro filed this action seeking legal and physical custody of the child. Navarro subsequently moved to Hawaii. Neither party resides in Idaho.

Navarro asserts error in the following areas; (1) a previous guardianship order for Yonkers' other children prevents her from arguing her fitness as a parent, (2) the Magistrate Judge abused his discretion by failing to admit evidence that Yonkers lied on the record, (3) the Magistrate Judge failed to treat Yonkers unilateral move from Idaho to Nevada with the appropriate weight, (4) the Magistrate Judge abused his discretion when he denied Navarro's motion to compel the psychological testing of the parties, (5) and there is insufficient evidence to support the award of primary physical custody to Yonkers. Navarro appeals to this Court.